



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0911]

RIN 1625-AA09

Drawbridge Operation Regulation; Mobile River, Hurricane, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating requirements for the CSX Transportation Railroad drawbridge across the Mobile River, mile 13.3 near Hurricane, Mobile County, Alabama. This proposed rule allows the bridge owner to operate the bridge remotely from the CSX remote control center in Mobile, AL.

DATES: Comments and relate material must reach the Coast Guard on or before [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0911 using Federal e-Rulemaking Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administration Branch Chief; telephone (504) 671-2128, email Douglas.A.Blakemore@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
CSX	CSX Transportation
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The CSX Transportation Railroad drawbridge has a vertical clearance of 5.5' in the closed to navigation position and operates in accordance with 33 CFR 117.5. The CSX Railroad Company, the owner of the bridge requested to change operation of the bridge from a tended drawbridge to a remotely operated drawbridge. This proposed rule will not change the operation schedule of the bridge. A copy of the bridge owners request can be found at <https://www.regulations.gov> in the Docket USCG-2019-0911.

The waterway users include recreational vessels and commercial tows; which combined requires approximately six openings a day.

CSX has completed installation of a remote operation system at the bridge and a remote control center, located in Mobile, AL. At the bridge, CSX has installed infrared cameras, closed circuit cameras and TVs, communication systems and information technology systems on the bridge that allow an operator from Mobile to monitor and control the bridge. They have also developed an operations manual that remote operators use to control each bridge.

In the future, CSX anticipates to remotely operate an additional ten drawbridges from the CSX remote control center. As a general rule the Coast Guard will consider allowing one (1) remote operator to control up to three (3) separate bridges. This is dependent on the type of vessels that use the waterways, vessel traffic volume and environmental or geographical conditions of each bridge and waterway

On January 27, 2020 the Coast Guard published a temporary deviation from regulations; request for comments (TD) entitled Drawbridge Operation Regulation; Mobile River, Hurricane, AL in the Federal Register (85 FR 4587). This temporary deviation was issued to test the remote operations system for 60 days. The objective was to also to collect and analyze information on how the drawbridge operated from a remote location and the potential effect on vessel traffic in the area. This deviation ended March 27, 2020.

Given the duration of time from the end of the test period and the development of this NPRM, the Coast Guard is authorizing second deviation to re-test the remote operations of the bridge and its effect on waterway mobility in that area. However, this deviation will run for 180 days and simultaneously with this NPRM. Both under the same docket number. Both documents can be found at <https://www.regulations.gov> and comments can be made to either document.

During the 60 day test period, the Coast Guard did not identify any issues with the remote operation of the bridge or any negative impact to a vessels reasonable ability to use this waterway. The Coast Guard received four comments from the public during the test period. These comments can be viewed in the Docket and have been addressed throughout this NPRM or below. These comments have been summarized and evaluated by the Coast Guard.

One of the comments received expressed concern that remote operation systems have not been proven. Under 33 CFR 117.42 the Coast Guard has authorized a number of drawbridge to be remotely operated with successful results. Safety is a priority and the bridge must operate as if a drawtender were present at the bridge.

The same commenter had safety concerns that without drawtenders on site, maintenance, repairs, inspections and vessel assistance through the bridge would not be conducted. In accordance with CSX procedures, drawtenders are not allowed to perform

these actions. There are also concerns about unreported strikes of the bridge by vessels and potential trespassers at the bridge. CSX has cameras at the bridge and given that the bridge operating schedule is open on demand, the bridge must be monitored 24 hours a day. Also, vessels are required to report certain marine incidents and casualties and local law enforcement will be alerted if there is illegal activity at the bridge.

Another comment recommended that the bridge remain in the open to navigation position and close when a train is approaching. Coast Guard will consider this option and discuss with CSX during the comment and test period.

III. Discussion of Proposed Rule

33 CFR 117.42 sets Coast Guard drawbridge regulations. This regulation authorizes the Coast Guard District Commander to approve operations from a remote site. CSX has requested to operate the CSX Transportation Bridge across the Mobile River from the CSX remote control center in Mobile, AL. The waterway users include recreational vessels and commercial tows; which combined requires approximately six openings a day.

Presently, the bridge opens on signal for the passage of vessels in accordance with 33 CFR 117.05 and this proposed rule will not change that operating schedule. This proposed rule will also not change how a request to open the bridge will be conducted. Mariners requiring an opening may do so by contacting the CSX remote control center on Channels 13/16 or by the phone number posted at the bridge.

The Coast Guard has visited the CSX remote control center several times and has confirmed that the remote operating system is effective. This proposed rule allows CSX to control the drawbridge from their remote control center and requires CSX to have the capability, including resources and manpower to return the operator to the bridge location within 3 hours following any of the below situations:

- Any component of the remote operations system fails and prevents the remote

operator from being able to visually identify vessels, communicate with vessels, detect vessels immediately underneath the bridge or visually identify trains approaching the bridge.

- CSX fails to meet Federal Railway Administration (FRA) or any other government agency safety requirements.
- Anytime that CSX procedures, equipment or operators fail to safely open and close the bridge fail.
- At the direction of the District Commander.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize its analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still transit the bridge with the bridge operator controlling the bridge from a remote location.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities

during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, the Coast Guard does discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f) and have made. The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or

procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; DHS Delegation No. 0170.1.

2. Add § 117.111 to read as follows:

§ 117.111 Mobile River.

(a) The draw of the CSX Transportation railroad bridge, mile 13.3 located near Hurricane, AL shall be remotely operated by the bridge operator at CSX's bridge remote control center in Mobile, Alabama. Closed Circuit TVs, infrared detectors, communications systems and information technology systems have been installed at the bridge. Vessels can contact the CSX bridge operator via VHF-FM channel 13 or by telephone at the number displayed on the signs posted at the bridge to request an opening of the draw.

(b) CSX will return the operator to the bridge location within 3 hours following any of the situations in this paragraph (b):

(1) Any component of the remote operations system fails and prevents the remote operator from being able to visually identify vessels, communicate with vessels, detect vessels immediately underneath the bridge or visually identify trains approaching the

bridge.

(2) CSX fails to meet Federal Railway Administration (FRA) or any other government agency safety requirements.

(3) Anytime that CSX procedures, equipment or operators fail to safely open and close the bridge fail.

(4) Anytime at the direction of the District Commander.

Dated: March 16, 2021

John P. Nadeau

Rear Admiral, U.S. Coast Guard,

Commander, Eighth Coast Guard District.

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